



November 15, 2000

Mr. Leslie R. Sweet  
Legal Advisor  
Dallas County Sheriff Department  
133 North Industrial Boulevard  
Dallas, Texas 75207-4313

OR2000-4428

Dear Mr. Sweet:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141332.

The Dallas County Sheriff's Department (the "department") received a request for the entire internal affairs file of a named employee. The requestor agrees to the redaction of the names of authors of documents contained in that file. You have released all information except the affidavits of witnesses and victims, which you claim are excepted from required disclosure by section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert that the submitted information is excepted from required public disclosure by section 552.108. You also assert that the disclosure of witness or victim identities and statements could subject those individuals to "possible intimidation or harassment or harm the prospects of future cooperation between witnesses and law enforcement officers." However, the submitted information appears to relate entirely to an internal affairs investigation rather than a criminal investigation. Therefore, you have not shown how release of the requested information "would interfere with the detection, investigation, or prosecution of crime." The department may not withhold any information pursuant to section 552.108.

Nonetheless, we find that the department may be required to withhold some of the requested information under section 552.101.<sup>1</sup> Section 552.101 excepts from disclosure "information considered confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). Although information relating to an internal investigation of sexual harassment claims involving public employees may be highly intimate or embarrassing, the public generally has a legitimate interest in knowing the details of such an investigation. Open Records Decision No. 444 (1986).

The court addressed the applicability of the common law privacy doctrine to files of an investigation of allegations of sexual harassment in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In conclusion, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.* Based on *Ellen*, a governmental body must withhold the identities of alleged victims and witnesses to alleged sexual harassment as well as any information which would tend to identify a victim or witness.

The submitted information in Attachment 2 consists of several victim and witness affidavits pertaining to allegations that a deputy sexually harassed the victims. After reviewing the submitted affidavits, we do not find any document which constitutes an adequate summary. Because there is not an adequate summary, you must release the submitted information to this requestor but you must redact the names and identifying information of the victims of and witnesses to the sexual harassment allegations, as we have marked.<sup>2</sup>

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception such as section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481(1987), 480 (1987), 470 (1987).

<sup>2</sup>We caution you that you should ask this office for another ruling if you are asked for this information by another requestor. We have not marked for redaction section 552.117 information relating to this requestor, because section 552.023 of the Government Code provides a special right of access to a person or a person's authorized representative to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

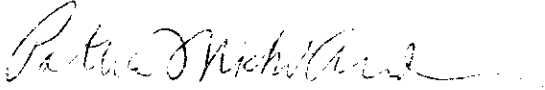
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia Michels Anderson".

Patricia Michels Anderson  
Assistant Attorney General  
Open Records Division

PMA/seg

Ref: ID# 141332

Encl. Submitted documents

cc: Mr. Michael R. Ball  
P.O. Box 167  
Rosser, Texas 75157  
(w/o enclosures)